IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 225 OF 2006

Shri Sandip Sakharam Kaphare ....Applicant.

V/s

The State of Maharashtra ....Respondent.

Mr. Vilas Tapkir for the applicant.
Ms. S.D. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 8th March, 2006

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant and the learned APP for the State.

2. Rule.

3. Rule returnable forthwith. Respondent waives service.

4. The applicant has filed an application for bail which was granted by this Court by order dated 6/2/2006.

5. The applicant had sought leave of this Court to amend the application and add a prayer for quashing the complaint. Accordingly, leave to amend was

granted and the prayer was amended.

6. Since the applications for quashing are not assigned to this Court, liberty was granted to the applicant to obtain appropriate orders from the Hon'ble Chief Justice. Accordingly, thereafter, the orders were obtained from the Hon'ble Chief Justice and this application has been assigned to this Court.

7. A complaint was filed against the applicant for the offence punishable under section 376 read with section 506 of the Indian Penal Code. It is the case of the complainant in the complaint that the prosecutrix had gone to attend Dandiya on 11/10/2005. However, she did not return. Therefore, inquires were made about her with her friends. Finally, she returned late in the night. She was asked why she had returned late. She informed that the applicant had raped her. Thereafter, a complaint was filed after a lapse of three days on 14/10/2005. The father and mother of the prosecutrix have filed affidavits in which they have stated that they do not wish to prosecute the applicant and that the marriage of the prosecutrix is fixed. Both the parents of the prosecutrix are present in Court. I have inquired with the learned APP to find out through the

Investigating Officer who is also present in Court as to whether any threat was given by the present applicant to the parents of the prosecutrix. The Investigating Officer, after making inquiries with the parents of the prosecutrix, has stated that no such threat or coercion was exercised by the applicant and that they have filed the affidavit on their free will.

8. Considering these facts and circumstances and having gone through the evidence on record, I am of the view, that the complaint is liable to be quashed. The parents of the prosecutrix have admitted that a false complaint is filed. The medical evidence shows that ossification test was performed and the age of the prosecutrix, according to the ossification test, is between 14 to 16 years. The prosecutrix in her statement dated 12/10/2004 has stated that the applicant had merely teased her and besides this no other incident had taken place. This is corroborated by the statement of Ashwini who is the friend of the prosecutrix and who was present at that time. She has stated that the applicant caught the hand of the prosecutrix and had asked her whether she was going to meet him on the next day. Further, it can be seen that the mother of the prosecutrix had filed a complaint on the very next day, after the alleged

incident, i.e. on 12/10/2005 in which she had alleged that the applicant used to tease the prosecutrix and, therefore, action should be taken against him.

9. Taking into consideration all these facts and circumstances, I am of the view that ends of justice would be met if the complaint is quashed and set aside. The parents of the girl also have categorically stated in their affidavits that they do not wish to prosecute the applicant. The prosecutrix also in her statement which is recorded by the police has stated that besides the incident of teasing no other incident had taken place. The prosecutrix also is to get married within a short time and the continuance of this case is likely to cause further prejudice in her matrimonial life. Taking an over all view of the matter, in my view, this is a fit case for quashing the case which is filed against the present applicant.

10. Accordingly, the complaint is quashed. Rule is made absolute in terms of prayer clause (aa).

11. Application is accordingly disposed of.

V.M. KANADE, J.